

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ALREE B. SWEAT, III,

Petitioner,

No. 2:16-cv-01263-JCH-KRS

v.

JAMES MULHERON, Warden,

Respondent.

**ORDER ADOPTING PROPOSED FINDINGS AND RECOMMENDED
DISPOSITION, GRANTING MOTION TO DISMISS UNEXHAUSTED CLAIMS, AND
DIRECTING RESPONDENT TO FILE AN AMENDED ANSWER**

This matter comes before the Court on Magistrate Judge Kevin R. Sweazea's Proposed Findings and Recommended Disposition ("PFRD") dated June 18, 2018. (Doc. 19). The magistrate judge recommended that Alree Sweat's so-called "mixed" petition under 28 U.S.C. § 2254 for a writ habeas corpus, containing both exhausted and unexhausted claims, be dismissed to allow Sweat to present those challenges he did not exhaust to the New Mexico courts. (*Id.*). Alternatively, the magistrate judge proposed that Sweat be permitted to proceed on the claims he exhausted in the state court by voluntarily dismissing the ones he had not. (*Id.*). Since the entry of the PFRD, Warden James Mulheron filed a document (Doc. 20) indicating he would not object to the PFRD. On June 26, 2018, Sweat moved to dismiss his unexhausted claims. (Doc. 21). In light of the parties' submissions agreeing Sweat may proceed on his exhausted claims if he agreed to dismiss the others, the Court will now adopt the PFRD.

IT IS THEREFORE ORDERED that:

- 1) the PFRD (Doc. 19) is adopted as an order of the Court;

- 2) Sweat's motion to dismiss his unexhausted claims (Doc. 21) is GRANTED and Sweat may proceed in this Court only as to those claims identified in the PRFD as having been exhausted;
- 3) on or before August 3, 2018, Respondent file an amended answer addressing the merits of the exhausted claims. Petitioner may reply on or before August 22, 2018.



JUDITH C. HERRERA
UNITED STATES DISTRICT JUDGE